

this part, the Office of General Counsel will inform the applicant and return the application without prejudice to its being resubmitted.

(b) If an application fails to provide all the information specified in §§ 1061.5 through 1061.10 of this part, and fails to fully explain why it has not been provided, the Office of General Counsel will either:

(1) Return it to the applicant without prejudice to its being resubmitted,

(2) Notify the applicant and allow it to provide the missing information, or

(3) If the deficiencies are minor and the applicant concurs, forward it to the Commission for consideration on its merits.

(c) If the Commission or the Commission staff believes that additional information is necessary or useful for a proper evaluation of the application, the Commission or Commission staff will promptly request the applicant to furnish such additional information.

(d) If an application is not returned under paragraphs (a) or (b) of this section, the Commission will consider it on its merits.

**§ 1061.12 Commission consideration on merits.**

(a) If the Commission proposes to grant an application for exemption it will, in accordance with 5 U.S.C. 553, publish a notice of that fact in the FEDERAL REGISTER, including a proposed exemption regulation, and provide an opportunity for written and

oral comments on the proposed exemption by any interested party.

(b) The Commission will evaluate all timely written and oral submissions received from interested parties, as well as any other available and relevant information on the proposal.

(c) The Commission's evaluation will focus on:

(1) Whether the State or local requirement provides a significantly higher degree of protection than the Commission statute or regulation from the risk of injury or illness that they both address.

(2) Whether the State or local requirement would unduly burden interstate commerce if the grant of the exemption from preemption allows it to go into effect. The Commission will evaluate these factors in accordance with the Commission's statutory preemption provisions and their legislative history.

(3) Whether compliance with the State or local requirements would not cause the product to be in violation of the applicable Commission statute, standard, or regulation.

(d) If, after evaluating the record, the Commission determines to grant an exemption, it will publish a final exemption regulation, including the findings required by the statutory preemption provisions, in the FEDERAL REGISTER.

(e) If the Commission denies an application, whether or not published for comment, it will publish its reasons for doing so in the FEDERAL REGISTER.